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20 UNITED STATES DISTRICT COURT
21 NORTHERN DISTRICT OF CALIFORNIA

22 MICHELLE HINDS, an individual, and TYRONE) Case No.: 4:18-cv-01431-JSW
23 (AGT) POWELL, an individual,)
24 Plaintiffs,) Plaintiffs' Excerpts of Admissions, With
25 vs.) Objections and Responses
26 FEDEX GROUND PACKAGE SYSTEM, INC.,) Judge: Honorable Jeffrey S. White
27 corporation; BAY RIM SERVICES, INC., a) Department: 5
corporation; and Does 1 through 25, inclusive,
Defendants.)

1 Pursuant to paragraph 2(g) of the Final Pretrial Conference Procedures and Required Filings,
2 Plaintiffs submit the following requests for admission that are to be used in their case in chief, along
3 with the objections of Defendant FedEx Ground and Plaintiffs' responses.

4

5 **REQUEST FOR ADMISSION NO. 22:**

6 During the period from March 5, 2014 to the present, FXG did not authorize rest periods for
7 pick-up and delivery drivers employed by Independent Service Providers in California.

8 **RESPONSE TO REQUEST FOR ADMISSION NO. 22:**

9 FedEx Ground objects to this request as stated in Objection Nos. 1, 2, 3 and 4. Subject to,
10 limited by, and without waiving such objections, FedEx Ground responds as follows:

11 **FedEx Ground admits that, during the Operative Period, it has not employed any**
12 **pickup and delivery drivers that were employed by SPs in California. Accordingly, FedEx**
13 **Ground has not undertaken any of the types of actions (such as establishing rest period**
14 **schedules, publishing its own rest period policies and procedures, or providing training or**
15 **instruction regarding rest periods) that FedEx Ground understands Plaintiffs contend would**
16 **be examples of actions that may be necessary for an employer to comply with its obligations**
17 **under Section 12 of Wage Order No. 9-2001 of the California Industrial Welfare Commission.**

18 **The SPs that employed the drivers were, however, at all times during the Operative**
19 **Period, required as stated in the SPs' written agreements with FedEx Ground, to comply with**
20 **all California laws and regulations applicable to the SPs' employment of such drivers.**
21 **Accordingly, FedEx Ground denies that the drivers were not authorized to take rest periods as**
22 **required by California law. Other than as expressly admitted above, FedEx Ground denies this**
23 **request.**

24 **OBJECTION:**

25 Federal Rules of Evidence 402 and 403. This request and response relate to this case as a
26 putative class action before the Court's denial of certification. What FedEx Ground did or did not do
27 with respect to all "pick-up and delivery drivers employed by Independent Service Providers in
28 California" during the period 2014 to present is not relevant to any issue in this case. Also, Plaintiffs'

1 use of the request and response would be unfairly prejudicial and confusing to jurors because it
2 indicate this is a larger or class action, and it is not. Additionally, whether FedEx Ground itself
3 “authorize[d] rest periods” for Service Providers’ employees across the State of California is not
4 relevant to Plaintiffs’ proofs, and it is prejudicial and confusing because it puts before the jury an
5 issue that is not pertinent to their decision (i.e., potential implications of FedEx Ground being a “bad
6 actor” for not authorizing such breaks itself when the real question is whether Bay Rim authorized
7 breaks for its drivers). This Court has thrice rejected Plaintiffs’ proposal to prove meal and rest break
8 violations based on FedEx Ground’s conduct divorced from Service Providers’ practices. (*See* Order
9 Denying Mot. for Class Cert. 15-16, ECF No. 171; Order on Def. FedEx Ground Package Sys., Inc.’s
10 Mot. to Strike 7-8, ECF No. 184; Order Granting Mot. to Strike PAGA Claim Asserted Against Def.
11 FedEx Ground Package Sys., Inc. 4-5, ECF No. 201.)

12 **RESPONSE TO OBJECTION:**

13 If FedEx Ground is an employer, it must authorize and permit rest periods. IWC Wage Order
14 9(12). This admission makes clear that FedEx Ground did not do anything to comply with this
15 obligation other than insert a clause in its standard ISP Agreement stating that ISPs should follow the
16 law.

17
18 **REQUEST FOR ADMISSION NO. 23:**

19 During the period from March 5, 2014 to the present, FXG did not maintain any policy
20 authorizing rest periods for pick-up and delivery drivers employed by Independent Service Providers
21 in California.

22 **RESPONSE TO REQUEST FOR ADMISSION NO. 23:**

23 FedEx Ground objects to this request as stated in Objection Nos. 1, 2, 3 and 4. Subject to,
24 limited by, and without waiving such objections, FedEx Ground responds as follows:

25 **For purposes of this response, the phrase "rest periods" refers to rest periods pursuant to**
26 **Section 12 of Wage Order No. 9-2001 of the California Industrial Welfare Commission.**

1 FedEx Ground admits that, during the Operative Period, it has not employed any
2 pickup and delivery drivers that were employed by SPs in California. Accordingly, FedEx
3 Ground has not established or published rest period policies of its own that applied to drivers.

4 The SPs that employed the drivers were, however, at all times during the Operative
5 Period, required as stated in the SPs' written agreements with FedEx Ground, to comply with
6 all California laws and regulations applicable to the SPs' employment of such drivers.
7 Accordingly, FedEx Ground denies that the drivers were not authorized to take rest periods as
8 required by California law.

9 Other than as expressly admitted above, FedEx Ground denies this request.

10 **OBJECTION:**

11 Federal Rules of Evidence 402 and 403. This request and response relate to this case as a
12 putative class action before the Court's denial of certification. What FedEx Ground did or did not do
13 with respect to all "pick-up and delivery drivers employed by Independent Service Providers in
14 California" during the period 2014 to present is not relevant to any issue in this case. Also, Plaintiffs'
15 use of the request and response would be unfairly prejudicial and confusing to jurors because it
16 indicate this is a larger or class action, and it is not. Additionally, whether FedEx Ground itself did
17 not "maintain any policy authorizing rest periods" for Service Providers' employees across the State
18 of California is not relevant to Plaintiffs' proofs, and it is prejudicial and confusing because it puts
19 before the jury an issue that is not pertinent to their decision (i.e., potential implications of FedEx
20 Ground being a "bad actor" for not authorizing such breaks itself when the real question is whether
21 Bay Rim authorized breaks for its drivers). This Court has thrice rejected Plaintiffs' proposal to prove
22 meal and rest break violations based on FedEx Ground's conduct divorced from Service Providers'
23 practices. (*See* Order Denying Mot. for Class Cert. 15-16, ECF No. 171; Order on Def. FedEx
24 Ground Package Sys., Inc.'s Mot. to Strike 7-8, ECF No. 184; Order Granting Mot. to Strike PAGA
25 Claim Asserted Against Def. FedEx Ground Package Sys., Inc. 4-5, ECF No. 201.)

26 **RESPONSE TO OBJECTION:**

27 If FedEx Ground is an employer, it must authorize and permit rest periods. IWC Wage Order
28 9(12). This admission makes clear that FedEx Ground did not do anything to comply with this

1 obligation other than insert a clause in its standard ISP Agreement stating that ISPs should follow the
2 law.

3

4 **REQUEST FOR ADMISSION NO. 24:**

5 During the period from March 5, 2014 to the present, FXG did not compensate pick-up and
6 delivery drivers employed by Independent Service Providers in California for the drivers' rest period
7 time.

8 **RESPONSE TO REQUEST FOR ADMISSION NO. 24:**

9 FedEx Ground objects to this request as stated in Objection Nos. 1, 2, 3 and 4. Subject to,
10 limited by, and without waiving such objections, FedEx Ground responds as follows:

11 **For purposes of this response, the phrase "rest periods" refers to rest periods pursuant
12 to Section 12 of Wage Order No. 9-2001 of the California Industrial Welfare Commission.**

13 FedEx Ground admits that, during the Operative Period, it has not employed any
14 pickup and delivery drivers that were employed by SPs in California. Accordingly, FedEx
15 Ground has not compensated drivers at all, including for rest periods.

16 The SPs that employed the drivers were, however, at all times during the Operative
17 Period, required as stated in the SPs' written agreements with FedEx Ground, to compensate
18 drivers in accordance with all California laws and regulations applicable to the SPs'
19 employment of such drivers. Accordingly, FedEx Ground denies that the drivers were not
20 compensated for rest period time to the extent required by California law.

21 **Other than as expressly admitted above, FedEx Ground denies this request.**

22 **OBJECTION:**

23 Federal Rules of Evidence 402 and 403. This request and response relate to this case as a
24 putative class action before the Court's denial of certification. What FedEx Ground did or did not do
25 with respect to all "pick-up and delivery drivers employed by Independent Service Providers in
26 California" during the period 2014 to present is not relevant to any issue in this case. Also, Plaintiffs'
27 use of the request and response would be unfairly prejudicial and confusing to jurors because it
28 indicate this is a larger or class action, and it is not. Additionally, whether FedEx Ground itself paid

1 “for the drivers’ rest period time” for Service Providers’ employees across the State of California is
2 not relevant to Plaintiffs’ proofs, and it is prejudicial and confusing because it puts before the jury an
3 issue that is not pertinent to their decision (i.e., potential implications of FedEx Ground being a “bad
4 actor” for not authorizing such breaks itself when the real question is whether Bay Rim authorized
5 breaks for its drivers). This Court has thrice rejected Plaintiffs’ proposal to prove meal and rest break
6 violations based on FedEx Ground’s conduct divorced from Service Providers’ practices. (*See* Order
7 Denying Mot. for Class Cert. 15-16, ECF No. 171; Order on Def. FedEx Ground Package Sys., Inc.’s
8 Mot. to Strike 7-8, ECF No. 184; Order Granting Mot. to Strike PAGA Claim Asserted Against Def.
9 FedEx Ground Package Sys., Inc. 4-5, ECF No. 201.)

10 **RESPONSE TO OBJECTION:**

11 If FedEx Ground is an employer, it must authorize and permit rest periods and must pay for
12 rest period time. IWC Wage Order 9(12). This admission makes clear that FedEx Ground did not do
13 anything to comply with these obligations other than insert a clause in its standard ISP Agreement
14 stating that ISPs should follow the law.

15
16 **REQUEST FOR ADMISSION NO. 25:**

17 During the period from March 5, 2014 to the present, FXG did not authorize meal periods for
18 pick-up and delivery drivers employed by Independent Service Providers in California.

19 **RESPONSE TO REQUEST FOR ADMISSION NO. 25:**

20 FedEx Ground objects to this request as stated in Objection Nos. 1, 2, 3, 4, and 5. Subject to,
21 limited by, and without waiving such objections, FedEx Ground responds as follows:

22 **FedEx Ground admits that, during the Operative Period, it has not employed any**
23 **pickup and delivery drivers that were employed by SPs in California. Accordingly, FedEx**
24 **Ground has not undertaken any of the types of actions (such as establishing meal period**
25 **schedules, publishing its own meal period policies and procedures, or providing training or**
26 **instruction regarding meal periods) that FedEx Ground understands Plaintiffs contend would**
27 **be examples of actions that may be necessary for an employer to comply with its obligations**

1 under Section 512(a) of the California Labor Code and Section 11 of Wage Order No. 9-2001 of
2 the California Industrial Welfare Commission.

3 The SPs that employed the drivers were, however, at all times during the Operative
4 Period, required as stated in the SPs' written agreements with FedEx Ground, to comply with
5 all California laws and regulations applicable to the SPs' employment of such drivers.
6 Accordingly, FedEx Ground denies that the drivers were not provided with meal periods as
7 required by California law.

8 Other than as expressly admitted above, FedEx Ground denies this request.

9 **OBJECTION:**

10 Federal Rules of Evidence 402 and 403. This request and response relate to this case as a
11 putative class action before the Court's denial of certification. What FedEx Ground did or did not do
12 with respect to all "pick-up and delivery drivers employed by Independent Service Providers in
13 California" during the period 2014 to present is not relevant to any issue in this case. Also, Plaintiffs'
14 use of the request and response would be unfairly prejudicial and confusing to jurors because it
15 indicate this is a larger or class action, and it is not. Additionally, whether FedEx Ground itself
16 "authorize[d] meal periods" for Service Providers' employees across the State of California is not
17 relevant to Plaintiffs' proofs, and it is prejudicial and confusing because it puts before the jury an
18 issue that is not pertinent to their decision (i.e., potential implications of FedEx Ground being a "bad
19 actor" for not authorizing such breaks itself when the real question is whether Bay Rim authorized
20 breaks for its drivers). This Court has thrice rejected Plaintiffs' proposal to prove meal and rest break
21 violations based on FedEx Ground's conduct divorced from Service Providers' practices. (See Order
22 Denying Mot. for Class Cert. 15-16, ECF No. 171; Order on Def. FedEx Ground Package Sys., Inc.'s
23 Mot. to Strike 7-8, ECF No. 184; Order Granting Mot. to Strike PAGA Claim Asserted Against Def.
24 FedEx Ground Package Sys., Inc. 4-5, ECF No. 201.)

25 **RESPONSE TO OBJECTION:**

26 If FedEx Ground is an employer, it must provide meal rest periods by relieving them of duty.
27 IWC Wage Order 9(12). This admission makes clear that FedEx Ground did not do anything to
28

1 comply with this obligation other than insert a clause in its standard ISP Agreement stating that ISPs
2 should follow the law.

3

4 **REQUEST FOR ADMISSION NO. 26:**

5 During the period from March 5, 2014 to the present, FXG did not maintain any policy
6 authorizing meal periods for pick-up and delivery drivers employed by Independent Service
7 Providers in California.

8 **RESPONSE TO REQUEST FOR ADMISSION NO. 26:**

9 FedEx Ground objects to this request as stated in Objection Nos. 1, 2, 3, 4, and 5. Subject to,
10 limited by, and without waiving such objections, FedEx Ground responds as follows:

11 **FedEx Ground admits that, during the Operative Period, it has not employed any**
12 **pickup and delivery drivers that were employed by SPs in California. Accordingly, FedEx**
13 **Ground has not established or published meal period policies of its own that applied to drivers.**

14 **The SPs that employed the drivers were, however, at all times during the Operative**
15 **Period, required as stated in the SPs' written agreements with FedEx Ground, to comply with**
16 **all California laws and regulations applicable to the SPs' employment of such drivers.**
17 **Accordingly, FedEx Ground denies that the drivers were not provided with meal periods as**
18 **required by California law.**

19 **Other than as expressly admitted above, FedEx Ground denies this request.**

20 **OBJECTION:**

21 Federal Rules of Evidence 402 and 403. This request and response relate to this case as a
22 putative class action before the Court's denial of certification. What FedEx Ground did or did not do
23 with respect to all "pick-up and delivery drivers employed by Independent Service Providers in
24 California" during the period 2014 to present is not relevant to any issue in this case. Also, Plaintiffs'
25 use of the request and response would be unfairly prejudicial and confusing to jurors because it
26 indicate this is a larger or class action, and it is not. Additionally, whether FedEx Ground itself did
27 not "maintain any policy authorizing meal periods" for Service Providers' employees across the State
28 of California is not relevant to Plaintiffs' proofs, and it is prejudicial and confusing because it puts

1 before the jury an issue that is not pertinent to their decision (i.e., potential implications of FedEx
2 Ground being a “bad actor” for not authorizing such breaks itself when the real question is whether
3 Bay Rim authorized breaks for its drivers). This Court has thrice rejected Plaintiffs’ proposal to prove
4 meal and rest break violations based on FedEx Ground’s conduct divorced from Service Providers’
5 practices. (*See* Order Denying Mot. for Class Cert. 15-16, ECF No. 171; Order on Def. FedEx
6 Ground Package Sys., Inc.’s Mot. to Strike 7-8, ECF No. 184; Order Granting Mot. to Strike PAGA
7 Claim Asserted Against Def. FedEx Ground Package Sys., Inc. 4-5, ECF No. 201.)

8 **RESPONSE TO OBJECTION:**

9 If FedEx Ground is an employer, it must provide meal rest periods by relieving them of duty.
10 IWC Wage Order 9(12). This admission makes clear that FedEx Ground did not do anything to
11 comply with this obligation other than insert a clause in its standard ISP Agreement stating that ISPs
12 should follow the law.

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Respectfully submitted,

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Dated: September 19, 2022

aiman-smith & marcy

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/s/ Joseph Clapp

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Joseph Clapp, Esq.
Attorneys for Plaintiffs

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